

(1997) 01 SC CK 0154
In the Supreme Court Of India
Case No : Slp (C) No. 19606 Of 1996

Dr. Janak Raj Jai	Vs	APPELLANT
H.D. Deve Gowda		RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Constitution of India, 1950 — Article 75(5)

Citation : (1997) 10 SCC 393

Hon'ble Judges : A. M. Ahmadii, C.J; Sujata V. Manohar, J; G. B. Pattanaik, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

A.M. Ahmadi, C.J.,; Sujata V. Manohar and; G.B. Pattanaik, JJ.-The petitioner had filed a writ petition in the Delhi High Court being CWP No. 2408 of 1996 challenging the appointment of Shri H.D. Deve Gowda as the Prime Minister of India on the ground that his appointment was not legal and proper since he was not a Member of either House of Parliament. Since the writ petition was dismissed by the High Court, the petitioner has come before us by way of the present special leave petition.

2. A similar contention was urged before us in a writ petition filed under Article 32 of the Constitution of India by S.P. Anand. By our judgment and order in that matter, being S.P. Anand v. H.D. Deve Gowda¹, we have given detailed reasons for rejecting the petition. The basic question which is posed by the present petitioner is the same - Can a person who is not a Member of either House of Parliament be sworn in as the Prime Minister of India? After comparing in detail Articles 74 and 75 of the Constitution with Articles 163 and 164 of the Constitution, it has been observed in the above judgment as follows: (SCC pp. 743-44, para 16)

"Now Article 75(1) envisages a Council of Ministers with the Prime Minister at the head to aid and advise the President, and the latter is expected to act in

accordance with such advice but if he has any reservations he may require the Council of Ministers to reconsider such advice. Thus, the President has to act in accordance with the advice of the Council of Ministers as a body and not go by the advice of any single individual. Only a person who, the President thinks, commands the confidence of the Lok Sabha would be appointed the Prime Minister who in turn would choose the other Ministers. The Council of Ministers is made collectively responsible to the House of the People. The form of the oath prescribed in the Third Schedule under Article 75(4) is the same for the Prime Minister as well as a Minister. In other words, the Constitution does not draw any distinction between the Prime Minister and any other Minister in this behalf. This is not to say that the Prime Minister does not enjoy a special status; he does as the head of the Council of Ministers but the responsibility of the Council of Ministers to the House of the People is collective. Besides, the caption of Article 75 as a whole is "Other provisions as to Ministers". No separate provision is to be found dealing with the appointment of the Prime Minister as such. Therefore, even though the Prime Minister is appointed by the President after he is chosen by such number of Members of the House of the People as would ensure that he has the confidence of the House and would be able to command the support of the majority, and the Ministers are appointed on the advice of the Prime Minister, the entire Council of Ministers is made collectively responsible to the House and that ensures the smooth functioning of the democratic machinery. If any Minister does not agree with the majority decision of the Council of Ministers, his option is to resign or accept the majority decision. If he does not, the Prime Minister would drop him from his Cabinet and thus ensure collective responsibility. Therefore, even though a Prime Minister is not a member of either House of Parliament, once he is appointed he becomes answerable to the House and so also his Ministers and the principle of collective responsibility governs the democratic process. Even if a person is not a member of the House, if he has the support and confidence of the House, he can be chosen to head the Council of Ministers without violating the norms of democracy and the requirement of being accountable to the House would ensure the smooth functioning of the democratic process."

3. Dealing with the British convention that the Prime Minister should be a Member of either House, preferably the House of Commons, it has been observed therein that this is not our constitutional scheme since our Constitution clearly permits a non-Member to be appointed a Chief Minister or a Prime Minister for a short duration of six months. That is why in such cases when there is any doubt in the mind of the President, he normally asks the person appointed to seek a vote of confidence of the House of the People within a few days of his appointment. The contentions which have been urged by the petitioner, therefore, do not survive in the light of this judgment.

4. The petitioner, however, applied before the High Court of Delhi for a review of its impugned judgment on the ground that he had subsequently discovered that after being appointed as the Prime Minister of India, Shri Deve Gowda had

retained his membership of the Karnataka Legislative Assembly. He resigned from his membership of the Karnataka Legislative Assembly on becoming a Member of the Rajya Sabha. The High Court of Delhi rightly rejected the review petition since in a review petition, such new grounds could not be urged. The petitioner has challenged the rejection of this ground before us.

5. In order not to leave any grievance, we briefly deal with this additional submission also. Under Article 75(5), a person who is not a Member of either House of Parliament can be appointed a Minister for a period of six consecutive months. If during this period he is not elected to either House of Parliament he will cease to be a Minister. We have not been shown any article of the Constitution under which a person who is elected to a State Legislature is prohibited from being appointed as a Minister under Article 75(5). In fact, Article 75(5) is widely worded. It covers every person who is not a Member of either House of Parliament. Such a person can be appointed as a Minister and can remain as a Minister only for a period of six consecutive months unless he is elected to either House of Parliament within that period. If he is not so elected, he shall cease to be a Minister on the expiry of six consecutive months. The same provision is applicable to the Prime Minister for reasons which we have set out in our judgment in the case of S.P. Anand¹. There is no disqualification which can be spelled out under Article 75(5) in respect of a Member of a State Legislative Assembly, who is appointed under Article 75(5).

6. The contention that "his willingness and desire of becoming a Member of Parliament comes under cloud" if he is a Member of the Legislative Assembly has to be only stated to be rejected.

7. Briefly put, all the contentions urged in the present petition except the contention in regard to the rejection of the review application were considered in S.P. Anand case¹ after considering the constitutional scheme in that behalf. As far as the rejection of the review application is concerned, we think that the High Court was right in doing so.

8. The petition is, therefore, dismissed. There will, however, be no order as to costs.